

Letter of Findings: 04-20120693
Sales/Use Tax
For the 2009 Tax Year

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ISSUE

I. Sales/Use Tax – Agricultural Exemptions – Horses Purchased in Racetrack "Claiming" Transactions.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-1-27; IC § 6-2.5-5-1; IC § 6-2.5-5-8; [71 IAC 6.5-1-1](#); [71 IAC 6.5-1-2](#); [71 IAC 6.5-1-4](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-5](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Indiana Dep't. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

Taxpayer protests the imposition of use tax on claimed horses because the manure produced by the horses is used in Taxpayer's farming operation.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on horses that he acquired in "claiming" transactions that occurred at Indiana racetracks on August 15, 24, and 29 of 2009, and on September 19, 2009. Given that Taxpayer had not paid sales tax on these transactions, the Department issued a proposed assessment for use tax and interest. Taxpayer filed a protest regarding the proposed assessment. An administrative hearing was held on Taxpayer's protest and this Letter of Finding ensues. More facts will be provided below as needed.

I. Sales/Use Tax – Agricultural Exemptions – Horses Purchased in Racetrack "Claiming" Transactions.

DISCUSSION

The Department found that Taxpayer purchased horses at Indiana racetracks by means of "claiming" transactions. Claiming races are a method of determining the price of a horse, with the successful claimant taking title to the horse "at the time the horse leaves the starting gate and is declared an official starter." Taxpayer was the claimant of horses that were raced in claiming races. The Department assessed tax based upon the claiming amounts paid by Taxpayer for the horses. See also [71 IAC 6.5-1-1](#); [71 IAC 6.5-1-2](#); and [71 IAC 6.5-1-4](#) (referencing "claiming" transactions).

The notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

The purchase of a horse is subject to Indiana's sales/use tax, since horses are tangible personal property. IC § 6-2.5-1-27. An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. IC § 6-2.5-5 et seq.

The Department found that Taxpayer had acquired the horses at issue without paying sales tax at the time they were "claimed," and assessed use tax on the transactions.

Taxpayer does not, in this protest, contest the taxability of the acquisition of horses in "claiming" transactions. Taxpayer, however, does argue that there is a reason the acquisition of the horses should be exempt from sales

and use tax. Specifically, Taxpayer states that the horses he acquired in "claiming" transactions are an integral part of his corn and soy farming operation and therefore qualify for the agricultural exemption. Taxpayer argues that the horses he acquired in the "claiming" transactions are integral and essential to his farming operation because the manure generated by the horses is used to fertilize the crops in Taxpayer's farming operation. Taxpayer further explains that the horses are stabled at his farm and only leave the farm to race at Hoosier Park and Indiana Downs. Taxpayer states that the fertilizer is harvested several times a week and manually spread on the land.

When a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving that the terms of the exemption have been met. *Indiana Dep't. of Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. *Id.*

IC § 6-2.5-5-1, an exemption statute, states:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

This statute applies a "double direct" test in which a purchase for agricultural use is exempt only when the property is directly used in the direct production of food and food ingredients or commodities referenced above. This means that the purchase must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced.

Taxpayer provided documentation demonstrating that he is in the corn and soy farming business and that horses are stabled on his farm and their manure is used on the farm as fertilizer. However, the horses at issue are one step removed from Taxpayer's direct agricultural process. The horses produce the manure which is then used to fertilize the farm's crops. The horses are not directly acting on the direct production of food and food ingredients.

Also of relevance is [45 IAC 2.2-5-4](#), which states in relevant part:

...

- (c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.

Garden and lawn equipment, parts, and supplies.

Electricity for lighting and other non-agricultural use.

Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.

Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.

Pumps.

All saws.

All tools, including forks, shovels, hoes, welders, power tools, and hand tools.

Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.

Plumbing, electrical supplies, and accessories, pumps.

Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.

Food for non-exempt horses, ponies, etc.

Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.

Field tile or culverts.

Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste). Any replacement parts or accessories for the above items.

- (d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such

purposes.

(2) Feed and medicines sold for livestock and poultry described in Item (1).

(3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.

(4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.

(5) Milking machines, filters, strainers, and aerators.

(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.

(7) Grease and repair parts necessary for the servicing of exempt equipment.

(8) Containers used to package farm products for sale.

(9) Equipment designed to haul animal waste.

(10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

....

(Emphasis added).

The regulation quoted immediately above specifically excludes the subject horses from exemption because they are not used as draft animals in the production of agricultural products.

Additionally, [45 IAC 2.2-5-5](#) notes:

(a) The raising of saddle horses, harness horses, ponies, donkeys, or any other similar animals not used directly in direct agricultural production does not qualify as agricultural production for "human consumption" under the gross retail sales and use tax act. Consequently, the purchase of supplies, food, materials, and equipment used in raising or maintaining such animals are subject to the sales tax unless the items are directly used or consumed in the production of such animals for resale in the regular course of the purchaser's business.

(b) The purchase of any of the above animals is subject to the sales tax unless the purchaser is a registered retail merchant and is buying such animal for resale in the regular course of his business.

(Emphasis added).

Taxpayer is not purchasing these horses for resale in the regular course of his agricultural business.

The horses at issue were acquired in "claiming" transactions at the race tracks as race horses. The use of the horses' biological byproduct – manure – though perhaps important to Taxpayer's agricultural production process, does not meet the requirement that the horses be used directly in the direct agricultural process required by Indiana law and is furthermore incidental to the purchase of the horses as race horses. Thus the subject horses do not come within the scope of the sales and use tax exemption found at IC § 6-2.5-5-1.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 04/24/2013 by Legislative Services Agency
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